Supreme Court, U.S.
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No. 04-

IN THE

Supreme Court of the United States

LANHAM FORD, INC.

Petitioner,

v.

FORD MOTOR COMPANY,

Respondent.

On Petition for Writ of Certiorari
To The United States Court of Appeals
for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether there should be a consistent standard across the circuit courts of appeals for the burden of proof a removing defendant must meet to establish the required amount in controversy for federal diversity jurisdiction–and whether the legal certainty standard should be employed to limit federal diversity jurisdiction.

Whether there should be a clear standard for measuring the amount in controversy to determine diversity jurisdiction pursuant to 28 U.S.C. § 1332(a) in removed actions seeking injunctive relief that do not claim a specific amount of damages.

PARTIES TO THE PROCEEDINGS

The parties to the proceeding below were Lanham Ford, Inc. ("Lanham Ford") and Ford Motor Company ("Ford"). Petitioner Lanham Ford states, pursuant to Supreme Court Rule 29.6, that its parent company is Mariam, Inc. d/b/a DAR-CARS, Ltd. Petitioner Lanham Ford further states that it has no other parent companies or subsidiaries.

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PETITION FOR A WRIT OF CERTIORARI

Lanham Ford petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS AND JUDGMENTS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit (Pet. App. 1a-6a) was issued on June 8, 2004 and is reported at 2004 WL 1244282, at *1 (4th Cir. June 8, 2004).

The judgment of the United States District Court for the District of Maryland (Pet. App. 7a-15a) was issued on June 23, 2003 and is reported at 273 F.Supp.2d 691 (D. Md. 2003).

JURISDICTIONAL STATEMENT

The United States Court of Appeals for the Fourth Circuit entered judgment in this case on June 8, 2004. (Pet. App. 1a-6a). This Court has jurisdiction under 28 U.S.C. § 1254(1) (2003).

STATUTES INVOLVED

28 U.S.C. § 1441(a) provides, in pertinent part, that:

> (a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

28 U.S.C. § 1441 (a) (2003).

28 U.S.C. § 1332(a) provides, in pertinent part, that:

> (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interests and costs, and is between–
>
> (1) citizens of different States . . . .

28 U.S.C. § 1332 (a) (2003).

STATEMENT

A. Statutory Background[1]

Congress has acted to limit federal jurisdiction through an amount in controversy requirement from the beginning of the federal judicial system. The Federal Judiciary Act of 1789 established an amount in controversy requirement of $500 for federal jurisdiction.[2] "The judicial federalism theme behind the original amount requirement sought to preserve the autonomy of the state courts and reduce the danger of federal court usurpation . . . . Congress' successive escalations of the amount threshold must be seen as a legislative commitment to this device."[3] Congress has only reduced the amount requirement once, lowering the requirement from the original $500 to $400 in 1801—and then reestablishing the $500 requirement the following year.[4]

Congress has continuously raised the amount in controversy in response to both federalism concerns and the

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[1] Although this case was removed under 28 U.S.C. § 1441(a), that statute is not analyzed here. The fact that "any civil action . . . of which the district courts of the United States have original jurisdiction, may be removed" is not at issue in this case. This case turns on whether or not the district court, in fact, has diversity jurisdiction. Therefore, the requirements of such jurisdiction under 28 U.S.C. § 1332(a) are analyzed fully herein.

[2] Federal Judiciary Act of 1789 § 11, 1 Stat. 79 (current version at 28 U.S.C. § 1332(a) (2003)).

[3] 102 F.R.D. 299, 305-06 (1984).

[4] *Id.* at 307 ("Why Congress reduced the amount is something of a mystery.").

growing federal diversity caseload. In 1887 and 1888, the amount was raised to $2,000.[5] The Congressional debates pointed out the strain on the system caused by a tenfold population increase since the amount had first been established,[6] as well as "the inconvenience and wrong of subjecting mere local affairs to the great expense of national jurisdiction."[7] In 1911, the amount requirement was raised to $3,000,[8] with supporters again focusing on territorial and population increases that had "greatly increased the business of the Federal judiciary."[9] In 1958, after noting a "tremendous" increase in the use of federal courts following World War II,[10] Congress raised the jurisdictional amount to $10,000.[11]

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[5] Act of March 3, 1887, ch. 373, § 1. 24 Stat. 552, as amended; Act of August 13, 1888, ch. 866, § 1, 25 Stat. 433 (current version at 28 U.S.C. § 1332(a) (2003)). The first Act changed the amount, while the second Act was passed to correct errors in the enrollment of the first Act. *See* 102 F.R.D. at 308 n.59.

[6] 18 CONG. REC. 614 (Jan. 13, 1887) (Remarks of Rep. Culberson).

[7] 18 CONG. REC. 2544 (March 2, 1887) (Remarks of Sen. Edmunds).

[8] Act of March 3, 1911, ch. 231, § 24, 36 Stat. 1091 (current version at 28 U.S.C. § 1332(a) (2003)).

[9] 102 F.R.D. at 311 (quoting a speech given in 1911 by Rep. Reuben O. Moon, a consistent supporter of increasing the amount in controversy).

[10] The Senate Report stated that total civil cases were up 75% since the war. *See* S. Rep. No. 1830, at 2 (1958), *reprinted in* 1958 U.S.C.A.N.N. 3099, 3100.

[11] Act of July 25, 1958, §2, 72 Stat. 415 (current version at 28 U.S.C. § 1332(a) (2003)).

Recent sessions of Congress have again moved to substantially reduce the number of diversity cases being heard by federal courts. In 1988, Congress increased the amount in controversy requirement to $50,000 in the Judicial Improvements and Access to Justice Act,[12] which proponents believed "should reduce the Federal diversity caseload by up to 40%."[13] The House Report noted that "[t]he Judicial Conference of the United States has long supported total abolition of diversity jurisdiction" and that efforts to eliminate diversity jurisdiction entirely had passed the Committee of the Judiciary's Subcommittee on Courts, Civil Liberties, and the Administration of Justice during the 100th Congress.[14] In a section of the Act pertaining to removal, the Report stated that Congress rejected an option giving jurisdictional discretion to courts after joinder by nondiverse defendants "to avoid the opposition that might be encountered by a proposal that would provide a small enlargement of diversity jurisdiction."[15] Eight years later, Congress acted again to restrict diversity jurisdiction, raising the amount in controversy to its current level of $75,000 in the Federal Courts Improvement Act of 1996.[16] The Senate Report noted the necessity of balancing the needs of those making use of the federal courts with "the need

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[12] Judicial Improvements and Access to Justice Act, Pub. L. 100-702, 102 Stat. 4642 (1988) (current version at 28 U.S.C. § 1332(a) (2003)).

[13] H.R. REP. NO. 100-889, at 44-45 (1988), *reprinted in* 1988 U.S.C.A.N.N. 5982, 6005-06.

[14] H.R. REP. NO. 100-889, at 44-45 (1988), *reprinted in* 1988 U.S.C.A.N.N. 5982, 6005.

[15] *Id.* at 73, *reprinted in* 1988 U.S.C.A.N.N. 5982, 6034

[16] Federal Courts Improvement Act of 1996, Pub. L. 104-317, 110 Stat. 3850 (1996); 28 U.S.C. § 1332(a) (2003).

to assist the federal judiciary in reducing its increasing caseload."[17] An attached cost estimate included a prediction by the Administrative Office of U.S. Courts that "increasing this threshold will exclude about 3,000 to 6,000 civil cases each year from access to Federal courts."[18]

This legislative history unequivocally demonstrates that for more than two centuries, Congress has consistently used the amount in controversy requirement to limit federal court jurisdiction. When Congress has believed that giving a certain class of litigants a federal forum outweighed federalism concerns, it has exempted those litigants from the amount requirements.[19] Other than cases involving federal questions, the intent of Congress has been clear: to uphold the system of judicial federalism and decrease the federal diversity caseload.

Based on this legislative history, the mandate of federal courts must be to strictly construe and limit federal diversity jurisdiction and not to expand such jurisdiction.

B. Proceedings Below

This dispute arises out of Respondent Ford's attempts to terminate its Dealer Sales and Service Agreement ("Dealer Agreement") with Petitioner Lanham Ford on the grounds that Lanham Ford is not selling a sufficient number of Ford

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[17] S. Rep. No. 104-366, at 29 (1996) *reprinted in* 1996 U.S.C.A.N.N. 4202, 4209.

[18] *Id.* at 47 *reprinted in* 1996 U.S.C.A.N.N. 4202, 4227.

[19] Congress' historical policy of granting exceptions for federal questions "stands in bold relief" to their attempts to restrict access to federal court in diversity cases. *See* 102 F.R.D. at 306 n.45.

products in a predominantly minority populated sales area and for alleged sales personnel turnover. On February 19, 2002, Ford sent Lanham Ford a notice to terminate Lanham Ford's franchise entitled "Notice of Termination." *See* Joint Appendix ("J.A.")[20] at 20-22. On March 6, 2002, Lanham Ford timely appealed Ford's proposed termination notice to Ford's internal Policy Board as was required by the Dealer Agreement. (J.A. 45, 70-71). The Dealer Agreement provides Lanham Ford the right to a good faith, open and objective hearing by the Policy Board that reaches a fair and equitable resolution of its complaint. (J.A. 60).

On May 1, 2002, Lanham Ford also filed its challenge to the proposed termination with the Maryland Motor Vehicle Administration ("MVA") pursuant to Md. Code Ann., Trans. II §§ 15-209 & 15-214. (J.A. 6). The MVA proceeding was stayed until the Policy Board rendered a decision and continues to be stayed. (J.A. 8, 127, 218-225).

Lanham Ford repeatedly requested that Ford produce relevant information and documents in the exclusive possession of Ford and its subsidiaries, so that Lanham Ford could adequately present its position to the Policy Board. (J.A. 72-83). Lanham Ford sought significant and material documents in the exclusive possession of Ford and its subsidiary relating to the financing of minority customers at Lanham Ford to determine, in part, if sales were lost due to Ford's failure and refusal to finance minority customers at Lanham Ford. Ford refused to produce the necessary documents and information. Lanham Ford, therefore, was forced to appear before the Policy Board, in accordance with

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[20] "J.A." refers to the Joint Appendix filed by the parties in the United States Court of Appeals for the Fourth Circuit.

Ford's franchise agreement with Lanham Ford, without proper documents and information to support its position. It was extremely important that Lanham Ford receive a fair hearing because if the Policy Board held in favor of Lanham Ford, the Policy Board's decision would be binding on Ford, while if the Policy Board held in favor of Ford, the decision would not be binding on Lanham Ford unless Lanham Ford accepted the decision. (J.A. 45, 62). On November 8, 2002, the Policy Board issued a decision that was based, in part, upon facts and documents that were outside the scope of the Notice of Termination. (J.A. 13-14, 16). The Policy Board had agreed to review documents, to produce documents to Lanham Ford and to allow Lanham Ford to further respond. The Policy Board failed to follow through on these representations.

On November 21, 2002, Lanham Ford filed suit in Prince George's County, Maryland Circuit Court, requesting that the Court enforce Lanham Ford's specific rights under the Dealer Agreement through a mandatory injunction, among other claims for injunctive relief. There was no claim for monetary damages or fees of any kind. On December 19, 2002, Ford filed its Notice of Removal, removing Lanham Ford's action to the United States District Court for the District of Maryland, Greenbelt Division. (J.A. 84). Lanham Ford then filed a Motion for Remand and Ford filed a Motion to Dismiss. At a hearing on April 10, 2003, the District Court heard limited arguments regarding the Motion for Remand and advised the parties to file supplemental memoranda on the issue of remanding the case prior to the District Court issuing a decision. (J.A. 120-125). The District Court permitted limited discovery. Ford alleged that the object of the litigation was the dealership franchise and not the injunction proceeding. Ford knew that the dealership franchise was the subject of a separate MVA proceeding that was not timely removed. Ford sought

to prove that allowing Lanham Ford to continue as a dealer would result in losses to Ford in the future. Lanham Ford contended that the object of the litigation must be ascertained as of the time of removal, that a strict standard for removal should apply, and that Ford had failed to meet its burden of establishing the required amount in controversy as of the time of removal.

On June 23, 2003, the District Court entered its decision denying Lanham Ford's Motion for Remand and granting Ford's Motion to Dismiss. (Pet. App. 7a-15a). The District Court held that the object of the litigation was Lanham Ford's dealership and that the value of the dealership exceeded $75,000. (Pet. App. 9a-11a). Further, the District Court held that the Policy Board hearing was procedurally fair and did not violate any statutory or contractual right to a fair hearing. (Pet. App. 11a-14a). Lanham Ford appealed the District Court's decision to the United States Court of Appeals for the Fourth Circuit on June 27, 2003.

The Fourth Circuit reviewed the briefs and heard oral arguments in this case. On June 8, 2004, the Fourth Circuit entered its decision affirming the District Court's decision denying Lanham Ford's Motion for Remand and granting Ford's Motion to Dismiss. (Pet. App. 1a-6a). The Fourth Circuit stated that the District of Maryland had erred by concluding that the dealership was the object of the litigation. (Pet. App. 4a). The Fourth Circuit created a formula to value the object of the litigation consisting of the sum of (1) the value to Lanham Ford of continuing its Ford franchise until it obtained a new hearing and (2) the value of the hearing, which the Fourth Circuit found was "roughly equivalent to Lanham's chance of success at retaining its franchise . . . multiplied by the value of Lanham's franchise as a going concern." (Pet. App.

5a). The Fourth Circuit cited no authorities for the creation of this formula. Relying on the same statistics used by the District of Maryland, such as Lanham Ford's 2002 total sales and gross profits, the Fourth Circuit stated that it was "confident that the value yielded by the above-described formula would be in excess of $75,000." (Pet. App. 5a).

Although the opinions of both the District of Maryland and the Fourth Circuit have discussed the merits of Lanham Ford's challenge to Ford's termination proceedings, Lanham Ford maintains, as it has from the beginning of this litigation, that the merits of the termination are an issue for the MVA and not the courts. (J.A. 213-214). The MVA proceeding was not removed to federal court.

The only issues relevant to this petition are the standard of proof that should be applied to the removing party for measuring the amount in controversy and the valuation of the amount in controversy in cases involving injunctive relief.

REASONS FOR GRANTING THE WRIT

I. THERE IS A SPLIT AMONG THE CIRCUIT COURTS AS TO THE BURDEN OF PROOF THAT A REMOVING DEFENDANT MUST MEET TO ESTABLISH THE AMOUNT IN CONTROVERSY.

In the absence of guidance from this Court regarding the proper burden of proof on a removing defendant seeking to establish the amount in controversy required for federal jurisdiction, the circuit courts have created a patchwork of standards—or sometimes, no standard at all—leaving similarly situated state plaintiffs to face different criteria in determining

whether their case will be heard in the forum of their choice or removed to federal court.

Among the circuit courts that have adopted standards for the burden of proof on a removing defendant, three separate standards are currently used by various courts. The standards are inconsistent between circuits and are in derogation of the intent of Congress, as evidenced by the legislative history regarding the amount in controversy.

The Second and Seventh Circuits place on a removing defendant "the burden of proving that it appears to a reasonable probability that the claim is in excess of the statutory jurisdictional amount." *Mehlenbacher v. Akzo Nobel Salt, Inc.*, 216 F.3d 291, 296 (2d Cir. 1997) (internal citation and quotation marks omitted); *see also Smith v. Am. Gen. Life & Accident Ins. Co.*, 337 F.3d 888, 892 (7th Cir. 2003).

Several circuits require removing defendants to establish the amount in controversy by a preponderance of the evidence. *See Garcia v. Koch Oil Co. of Texas, Inc.*, 351 F.3d 636, 638-39 (5th Cir. 2003); *In re Minn. Mut. Life Ins. Co. Sales Practices Litigation*, 346 F.3d 830, 834 (8th Cir. 2003); *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003); *Leonard v. Enter. Rent a Car*, 279 F.3d 967, 972 (11th Cir. 2002);[21] *Hayes v. Equitable Energy Res. Co.*, 266 F.3d 560, 572 (6th Cir. 2001). Even among the circuits that employ the preponderance of evidence standard, there are differences regarding the manner and circumstances

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[21] The Eleventh Circuit has also held that the burden of proof on a removing defendant is "legal certainty" where the complaint specifies an amount of damages below the amount in controversy. *See Burns v. Windsor Ins. Co.*, 31 F.3d 1092, 1095 (11th Cir. 1994).

in which the standard is applied. In the Fifth Circuit, after a removing defendant has established the amount in controversy by a preponderance of the evidence, the plaintiff can only defeat removal by proving to a legal certainty that the amount in controversy has not been met. *See, e.g., Grant v. Chevron Phillips Chem. Co.*, 309 F.3d 864, 869 (5th Cir. 2002). Several district courts (but no additional circuit courts) have adopted this standard. *See* 14C Charles A. Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 3725 (list of district court cases). Another difference arises where a plaintiff has specified a damage amount lower than the jurisdictional amount. In that situation, the Eighth Circuit will apply the preponderance of the evidence standard while the Eleventh Circuit will apply the legal certainty standard. *Compare In re Minn. Mut.*, 346 F.3d at 834 (applying preponderance test), *with Burns v. Windsor Ins. Co.*, 31 F.3d 1092, 1095 (11th Cir. 1994) (applying legal certainty test).

The most difficult standard for a removing defendant requires him or her to establish the amount in controversy to a "legal certainty." This standard has been applied by the Third and Eleventh Circuits. *See Samuel-Bassett v. Kia Motors Am., Inc.*, 357 F.3d 392, 398 (3d Cir. 2004); *Burns v. Windsor Ins. Co.*, 31 F.3d 1092, 1095 (11th Cir. 1994). By requiring the defendant to prove to a legal certainty that his or her case belongs in federal court, this standard is the most protective of federal jurisdiction and of a plaintiff's right to choose his or her forum. In explaining its application of the legal certainty standard in *Burns*, the Eleventh Circuit stated that "[d]efendant's right to remove and plaintiff's right to choose his forum are not on equal footing." *Burns*, 31 F.3d at 1095.

Some circuits have declined to adopt any standard at all or to clarify which standard a particular court will follow. *See*

Rota v. Consol. Coal Co., 175 F.3d 1016 n.4 (4th Cir. 1999) (UNPUBLISHED TABLE OPINION) (noting that "[t]his circuit has not addressed the issue" of the removing defendant's burden of proof, and "declin[ing] to adopt a particular standard here");[22] *Martin v. Franklin Capital Corp.*, 251 F.3d 1284, 1290 (10th Cir. 2001) (stating that the removing defendant must "at a minimum" prove the jurisdictional amount by a preponderance of the evidence, but declining to decide whether a more stringent standard should be applied).

Thus, two similarly situated state plaintiffs may face significantly different chances of having their cases removed to federal court based on the burden of proof standard that their respective circuits have adopted, if any. More troubling, in a circuit such as the Fourth Circuit which has failed to adopt any standard at all, similarly situated plaintiffs in the same district have been confronted with different standards for determining whether their cases are removed or remanded.[23]

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[22] It is commonly stated by district courts within the Fourth Circuit that the Fourth Circuit has not addressed the issue of a removing defendant's burden of proof. *See, e.g., Momin v. Maggiemoo's Int'l, L.L.C.*, 205 F.Supp.2d 506, 509 n.2 (D.Md. 2002). However, the confusion stemming from the Fourth Circuit's failure to directly address the issue in recent years has led at least one district court to posit that the Fourth Circuit may have adopted the "inverse legal certainty" standard in *Wiggins v. North Am. Equitable Life Assurance Co.* (644 F.2d 1014 (4th Cir. 1981)). *McCoy v. Erie Ins. Co.*, 147 F.Supp.2d 481, 487 n.4 (S.D. W.Va. 2001). The "inverse legal certainty" test requires defendants to prove merely that it is not a legal certainty that the amount in controversy will be below the threshold.

[23] *Compare Jones v. Allstate Ins. Co.*, 258 F.Supp.2d 424, 428 (D.S.C. 2003)(rejecting the "inverse legal certainty" standard but declining to adopt a particular standard because the evidence under any standard

When a plaintiff files an action in federal court and a defendant files a motion to dismiss for lack of jurisdiction, a "universal test" has evolved that the defendant must meet to prevail. *See* 14B Charles A. Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 3702 (hereinafter "14B Wright & Miller"). "It must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal." *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938). There should be a similarly consistent standard with regard to removed cases. "[T]he removal statutes and decisions of this Court are intended to have uniform nationwide application." *Grubbs v. Gen. Elec. Credit Corp.*, 405 U.S. 699, 705 (1972). A plaintiff should know with certainty what standard a defendant will have to meet to remove the case, and what the plaintiff's chances are of litigating in the original forum of his or her choice. A defendant should be held to a single burden of proof that will enable him or her to remove once that burden has been met. Most importantly, whether or not the federal courts have jurisdiction in a case should not be a mystery for litigants "solved" by the ad hoc reasoning of a federal court. Jurisdiction should be determined by clear standards, known in advance and consistent with Congressional intent regarding the scope of federal jurisdiction.

The dispute between Lanham Ford and Ford represents an opportunity for this Court to correct this untenable and indisputable circuit split, which gives rise not only to confusion for both plaintiffs and defendants, but also to unnecessary

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would not be enough to justify removal) *with Woodward v. Newcourt Commercial Fin. Corp.*, 60 F.Supp.2d 530, 531-32 (D.S.C. 1999) (applying the "inverse legal certainty" standard and denying plaintiff's motion to remand).

motions for removal and remand because the standards are far from clear. In this case, Lanham Ford sued in Maryland state court merely to obtain a new—and fair—internal administrative hearing in accordance with the franchise agreement between Ford and Lanham Ford. However, Lanham Ford's case was removed to federal court because the value of Lanham Ford, as a business, was improperly incorporated into the calculation of the amount in controversy. Neither the District of Maryland nor the Fourth Circuit ever discussed a standard for the burden of proof that Ford was required to meet to prevail on removal of the case. Certiorari should be granted now to ensure that a litigant's right to his or her day in court is not subject to such ad hoc reasoning, but governed by consistent standards.

II. THERE IS NO CLEAR STANDARD FOR MEASURING THE OBJECT OF THE LITIGATION WHEN A PLAINTIFF IN STATE COURT SEEKS INJUNCTIVE RELIEF WITHOUT SPECIFYING A DAMAGE AMOUNT.

The Fourth Circuit's valuation of the amount in controversy in the proceedings below highlights the lack of a clear standard for measuring the jurisdictional amount in controversy when a plaintiff seeks injunctive relief in state court without specifying an amount of monetary damages.

This Court has stated that "[i]n actions seeking injunctive or declaratory relief, the amount in controversy is measured by the value of the object of the litigation." *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 347 (1977). In *Hunt*, the plaintiffs (the Commission, on behalf of various apple growers and dealers) sought and received injunctive and declaratory relief against a North Carolina statute that, in

effect, prohibited the display of Washington state apple "grades." *Id.* at 335. The defendants appealed to this Court on three separate grounds, including the fact that the plaintiffs had failed to satisfy the amount in controversy requirement (then $10,000). *See id.* at 346. Based on evidence in the record that the plaintiffs "have suffered and will continue to suffer" lost sales and other damages, this Court applied the "universal" legal certainty test discussed in part I, *supra*. *Id.* at 346-47. Because it did not appear to a legal certainty that the plaintiffs' claims would not exceed $10,000, this Court found that the claims fulfilled the amount in controversy requirement. *Id.* at 346 (quoting *St. Paul Mercury*, 303 U.S. at 288-89).

When a plaintiff seeks injunctive relief in state court without specifying monetary damages and the case is removed to federal court, there is no "universal test" for determining the amount in controversy. As a result, Lanham Ford was subjected to a valuation of its claim for relief that was entirely ad hoc in this case. The Fourth Circuit, after stating that the District of Maryland had "erred in its conclusion that the object of the litigation was the dealership itself," proceeded to create its own formula out of whole cloth. (Pet. App. 4a-5a). Citing to no authority, the Fourth Circuit valued the amount in controversy as

> the sum of (i) the value to Lanham of the right to operate its Ford franchise until completion of a new hearing, and (ii) the value to Lanham of the hearing itself, which is roughly equivalent to Lanham's chance of success at retaining its franchise by going through this hearing, multiplied by the value of Lanham's franchise as a going business concern.

(Pet. App. 5a). Thus the Fourth Circuit simply used the same figures of annual sales and gross profits relied upon by the District of Maryland, multiplied them by the speculative "several months" it might take to grant Lanham Ford a new hearing, and assumed that the amount in controversy was met. (Pet. App. 5a). In the event that this first part of the formula did not yield the requisite amount in controversy, the Fourth Circuit opined that "certainly" adding the second part of the formula (the value of the franchise "multiplied" by the chance of success at prevailing in the second hearing) would yield an amount sufficient to justify federal jurisdiction. (Pet. App. 5a).

The Fourth Circuit's method of determining the object of this litigation is problematic for several reasons. First, the Fourth Circuit made no effort to justify its "certainty" that the jurisdictional amount would be met, or even to explain any of the values that were entered into its formula. This Court, in *Hunt*, could point to the damages already suffered by the plaintiffs as part of its determination of the amount in controversy. *See Hunt*, 432 U.S. at 347. In another case involving the valuation of injunctive relief, the District of Maryland determined that the amount in controversy was present and granted removal only after the defendants produced evidence showing that the requested relief would have a calculable monetary value far in excess of the amount requirement. *See In re Microsoft Corp. Antitrust Litigation*, 127 F.Supp.2d 702, 718-19 (D.Md. 2001). By contrast, in this case, Ford did not show, and the lower courts did not require a showing, that the requested relief had a monetary value in excess of $75,000. The justification for the Fourth Circuit's formula, and the court's resulting certainty that the amount in controversy would be met, remain a mystery to the litigants in this and all future cases.

Second, this Court has made clear that in injunctive actions, the amount in controversy does not depend on the total or net value of a business "save to the extent that it may be affected" by the action to be enjoined. *McNutt v. Gen. Motors Acceptance Corp. of Ind.*, 298 U.S. 178, 181 (1936). The Fourth Circuit based its decision on nothing more than taking these crude figures and multiplying them by a fraction.

The most troubling aspect of the Fourth Circuit's decision is that its valuation ignores the "well-settled principle . . . [that] the existence or non-existence of the required amount in controversy is determined as of the time that an action is commenced in the federal courts or arrives there . . . by way of removal." 14B Wright & Miller § 3702; *see, e.g., Manguno v. Prudential Prop. & Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2002) ("To determine whether jurisdiction is present for removal, we consider the claims in the state court petition as they existed at the time of removal"). The Fourth Circuit's method of valuation, contrary to this principle, extends the valuation of the amount in controversy into the indeterminate future. If this method of valuation were the norm, most cases pertaining to businesses would meet the jurisdictional threshold—it will almost always be the case that the amount will be met if the measurement extends indefinitely.

The methods used in this case run contrary to the general and oft-repeated principles that federal jurisdiction should be limited, that removal statutes should be strictly construed, and that doubts should be resolved by remanding doubtful cases to state court. *See* 14B Wright & Miller § 3721; *Dixon v. Coburg Dairy, Inc.*, 369 F.3d 811, 816 (4th Cir. 2004); *Allen v. Christenberry*, 327 F.3d 1290, 1293 (11th Cir. 2003); *Matheson*, 319 F.3d at 1090; *Manguno*, 276 F. 3d at

723; *Martin*, 251 F.3d at 1289; *Brierly v. Alusuisse Flexible Packaging, Inc.*, 184 F.3d 527, 534 (6th Cir. 1999).

When a plaintiff files a claim in state court seeking injunctive or declaratory relief, the valuation of the object of the litigation is crucial for determining whether the case will be heard in the plaintiff's forum of choice or in federal court. Certiorari should be granted now to provide litigants with clear standards for how such claims will be valued.

III. BECAUSE MORE CASES THAN EVER ARE BEING REMOVED TO FEDERAL COURTS, THE QUESTIONS PRESENTED IN THIS CASE DEMAND IMMEDIATE RESOLUTION.

The fiscal years 2002 and 2003 saw an enormous increase in the number of cases removed from state courts. Following the 1996 Amendments to 28 U.S.C. § 1332 which raised the amount in controversy to curtail federal diversity jurisdiction,[24] the number of cases removed had remained at a level near 30,000 per year for five years (with the number of removals never exceeding 12.3% of all federal actions).[25] In fiscal years 2002 and 2003, the numbers suddenly jumped to

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[24] Federal Courts Improvement Act of 1996, Pub. L. 104-317, 110 Stat. 3850 (1996).

[25] Analytical Services Office, Administrative Office of U.S. Courts, *Judicial Facts and Figures*, Table 2.12, *available at* http://www.uscourts.gov/judicialfactsfigures/table2.12.pdf. The percentage calculations cited in the text are the work of the authors of this brief.

55,480 and 44,193, respectively (constituting 20.2% and 17.5% of all federal actions in the respective fiscal years).[26]

Although other explanations have been offered that may partially explain the vast increase in removals,[27] there can be no doubt that the failure or refusal of federal courts to consistently police their own jurisdiction has been a contributing factor. Currently removing defendants are held to different burden of proof standards in different circuits, and some circuits have refused to adopt a standard. The overall result is that similarly situated litigants are treated differently depending on the circuit in which they file suit or the judge who hears their case.[28] There is also no standard for measuring the amount in controversy in injunctive suits, leading to ad hoc valuations like that conducted by the Fourth Circuit in the proceedings below. (Pet. App. 5a).

The absence of uniform standards for these determinations has many unfortunate effects on litigants and the courts. Plaintiffs and defendants have no reasonable way to predict whether their case will be heard in state or federal court. More time and resources are expended on litigating threshold questions of jurisdiction because the standards are not clear. Most troubling, the status quo increases the likelihood of courts basing their jurisdictional determinations on ad hoc preferences rather than consistent and predetermined standards. By resolving these conflicts, this Court can clarify these issues for

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[26] *Id.*

[27] *Id.* A footnote to Table 2.12 attributes the increase in removed cases in fiscal year 2003 to cases involving asbestos "friction products," but does not account for the sharp rise of removed cases in fiscal year 2002.

[28] *See supra* note 22.

litigants, limit the volume of threshold jurisdictional litigation, and promote consistency in the federal courts.

IV. "LEGAL CERTAINTY" IS THE STANDARD MOST CONSISTENT WITH THE INTENDED LIMITED NATURE OF FEDERAL JURISDICTION.

The legislative history of the amount in controversy requirement leads to the unambiguous conclusion that Congress has always intended to keep federal diversity jurisdiction limited. A decision in this matter will limit federal judicial actions. From the beginning of our judicial system, with only one brief exception,[29] every action Congress has taken with regard to the amount in controversy has been designed to further limit diversity jurisdiction. These limits on federal jurisdiction are consistent with the views of the Founding Fathers, who saw "the ordinary administration of civil and criminal justice" as "belonging to the province of State governments." *The Federalist* No. 17, at 101-02 (Hamilton) (Robert Scigliano ed., 2000). A legal certainty standard would ensure that "the ordinary administration of civil and criminal justice" remains the province of state courts, and that every case in federal court is important enough to justify the expending of federal resources. *Id.* The other, more relaxed standards in use in some of the circuits too easily allow defendants to exaggerate the likelihood that the amount in controversy will be met, and allow countless cases that could easily be resolved in state court into the federal system. Even worse, circuits which have no standard at all, like the Fourth Circuit, leave the jurisdictional determination in the hands of

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[29] *See supra* note 3.

whichever judge happens to hear the case.[30] Such ad hoc determinations are clearly contrary to the intent of both Congress and this country's Founding Fathers. The legal certainty standard, because it "comports with congressional use of the jurisdictional amount as a bright line determinant of federal jurisdiction,"[31] should be adopted by this Court.

Requiring defendants to establish the jurisdictional amount to a legal certainty would also be consistent with the general consensus that removal jurisdiction, like original federal jurisdiction, is to be limited in nature. "[T]here is ample case support . . . for the proposition that removal statutes will be strictly construed. Some federal courts go further . . . and say that all doubts on the question should be resolved against accepting removal jurisdiction." 14B Wright & Miller § 3721. These views have been expressed, often in the same words, by many of the circuits that maintain relaxed standards or no standard for the removing defendant's burden of proof. *See Dixon*, 369 F.3d at 816 [Fourth Circuit]; *Allen*, 327 F.3d at 1293 [Eleventh Circuit]; *Matheson*, 319 F.3d at 1090 [Ninth Circuit]; *Manguno*, 276 F. 3d at 723 [Fifth Circuit]; *Martin*, 251 F.3d at 1289 [Tenth Circuit]; *Brierly*, 184 F.3d at 534 [Sixth Circuit]. These circuits all acknowledge the need to restrict removal jurisdiction and to err on the side of remanding cases to state court—yet the standards they employ for removing defendants do not serve those ends. The Fifth Circuit's standard requiring defendants to establish the amount by a preponderance of the evidence—while only allowing

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[30] *See supra* note 22.

[31] Russell D. Jessee, *Pleading to Stay in State Court: Forum Control, Federal Removal Jurisdiction, and the Amount in Controversy Requirement*, 56 WASH. & LEE L. REV. 651, 686 (1999).

plaintiffs to overcome the defendant's showing by proving to a legal certainty that the claim is below the amount in controversy[32] —is particularly egregious in light of the general principle of limiting removal jurisdiction.

Finally, the need for uniformity suggests that this Court should determine a single burden of proof standard for the circuit courts. The status quo is inconsistent in its application and leads to different outcomes for similarly situated litigants. Litigants should know with certainty the circumstances under which they will have their cases adjudicated in federal courts.

This Court stated in 1938 that "[t]he intent of Congress drastically to restrict federal [diversity] jurisdiction . . . has always been rigorously enforced by the courts." *St. Paul Mercury*, 303 U.S. at 288. The confusing patchwork of burden of proof standards on removing defendants in the different circuits shows that this "rigorous" enforcement has broken down. Because of the considerations of Congressional intent, strict construction of removal jurisdiction, and uniformity, this Court should adopt a standard holding removing defendants to a burden of legal certainty to establish the amount in controversy.

V. THE COURT SHOULD SET A CLEAR STANDARD WITH REGARD TO VALUING THE OBJECT OF THE LITIGATION IN INJUNCTIVE ACTIONS.

Claims for injunctive relief that do not specify an amount of damages present "a special problem" in establishing the amount in controversy—a problem that the federal courts

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[32] *See, e.g., Grant*, 309 F.3d at 869.

have not been able to resolve in any meaningful way.[33] As noted earlier, the Fourth Circuit, in creating its formula in the proceedings below, refused to limit its valuation to the time of removal, and included estimated sales and profit figures for an indefinite future period. (Pet. App. 5a). This is in direct contradiction to the established principle that the amount in controversy should be determined as of the time of removal. *See* 14B Wright & Miller § 3702; *see, e.g., Manguno*, 276 F.3d at 723.

In addition, the Fourth Circuit never explained the basis of its "certainty" that the amount in controversy would be met, or what values were entered into the formula it created during this litigation. Therefore, despite the absence of any actual damages to Ford (as this Court found in *Hunt*), and despite the absence of a showing that the requested relief had a calculable value exceeding the jurisdictional amount (as the District of Maryland required in *In re Microsoft*), the Fourth Circuit found that the required amount was met in this case. (Pet. App. 4a-6a); *see also Hunt*, 432 U.S. at 437; *In re Microsoft*, 127 F.Supp.2d at 718-19. Surely a more definite determination should be required before a plaintiff's case is removed from the forum of his or her choice to a federal court.

This Court recently stated in a unanimous opinion that "[s]ubject-matter limitations on federal jurisdiction serve institutional interests. They keep the federal courts within the bounds the Constitution and Congress have prescribed. Accordingly, subject-matter delineations must be policed by the courts on their own initiative even at the highest level." *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999)

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[33] Brian Shaw McInnis, *The $75,000.01 Question: What is the Value of Injunctive Relief?* 6 GEO. MASON L. REV. 1013, 1014 (1998).

(citation omitted). The standardless determination used to value Lanham Ford's claim for injunctive relief in this case makes clear that the federal courts are failing to "police" these matters on their own. A standard promulgated by this Court will curb the use of ad hoc jurisdictional determinations, and effectively communicate to litigants which cases are likely to be heard in federal court.

This Court should adopt a standard for injunctive actions requiring courts to limit their calculations to determining the amount in controversy as of the day of removal. In addition, any calculations that are made by a court to confer federal jurisdiction should be based on actual damages and concrete evidence rather than on speculation and assumptions. The principle of limited federal jurisdiction demands nothing less.

CONCLUSION

For the above reasons, Petitioner's petition for a writ of certiorari should be granted.

Respectfully submitted,

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